



Comptroller General  
of the United States

407204

Washington, D.C. 20548

## Decision

Matter of: Blue Chip Machine

File: B-260547

Date: April 20, 1995

### DECISION

Blue Chip Machine protests the rejection of its best and final offer (BAFO) under request for proposals (RFP) No. DLA750-92-R-1055, issued by the Defense Logistics Agency (DLA) for windshield support assembly units. Blue Chip's BAFO was not considered for award because it was received late.

We dismiss the protest.

The agency received three initial proposals, including those from Blue Chip and ACM Industries, Inc. Blue Chip was the apparent low offeror. The contracting officer determined that Blue Chip was nonresponsive due to the firm's poor performance history and referred the matter of the firm's responsibility to the Small Business Administration (SBA) for a Certificate of Competency (COC) review. On November 23, 1994, the SBA issued a COC. On January 11, 1995, the contracting officer telephonically notified Blue Chip and ACM (the third proposal was rejected) that the agency was requesting BAFOs.

On January 12, the contracting officer telefaxed amendment No. 0008, dated December 8, 1994, to Blue Chip and ACM. Amendment No. 0008 notified offerors that discussions were concluded and that BAFOs were due by 1 p.m. on January 19. The amendment also noted that BAFO submissions were subject to Federal Acquisition Regulation (FAR) § 52.215-10 regarding late submissions. That provision states in relevant part, at paragraph (g), as follows:

"A modification resulting from the Contracting Officer's request for 'best and final' offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the government after receipt at the government installation."

Blue Chip began telefaxing its BAFO at 2:51 p.m. on January 19, almost 2 hours after the time for BAFOs had

closed. As a result, the agency rejected Blue Chip's BAFO of \$40.00 per unit as late and evaluated only the firm's previously submitted offer of \$58.50 per unit. The agency also considered ACM's BAFO of \$45.29 per unit, submitted before the closing. On February 22, the contracting officer notified Blue Chip of the proposed award to ACM as the low offeror; award was made to ACM on February 27.

Blue Chip does not dispute that its facsimile BAFO was received by DLA after the time set for receipt of BAFOs. Nor does it allege that the late receipt was due to mishandling by the government. We therefore have no basis to question the agency's rejection of Blue Chip's BAFO as late. While there is an exception to the FAR general rule requiring rejection of late BAFO submissions, as described above, in order to invoke that exception, set forth in FAR § 52.215-10(c), the initial proposal must be "otherwise successful"; that is, the proposal must be in line for award even without consideration of the late modification.<sup>1</sup> WESPAC SERCO, B-233883, Jan. 13, 1989, 89-1 CPD ¶ 39. Since that was not the case here, the exception cannot be invoked. Consequently, the rejection of Blue Chip's late BAFO was proper. See Brookfield Dev., Inc., et al., B-255944, Apr. 21, 1994, 94-1 CPD ¶ 273.

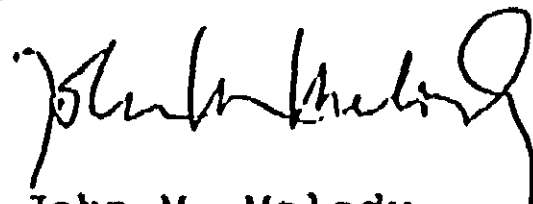
Blue Chip asserts that its BAFO should be accepted because it was informed by DLA's contracting officer that it had 'until close of business' on January 19, to submit its BAFO. However, notwithstanding this alleged oral advice, Blue Chip was informed in writing, by amendment No. 0008 that BAFOs were required to be submitted by 1 p.m. on January 19. The record indicates that DLA telephonically confirmed receipt of amendment No. 0008 with Blue Chip, and the firm does not dispute that it received the amendment. It is well-established that offerors who rely on oral advice that alters the written terms of a solicitation, as amended, do so at their own risk. See Kollmorgen Corp., 70 Comp. Gen. 551 (1991), 91-1 CPD ¶ 529. Moreover, an agency's actions do not constitute a waiver of an offeror's error or

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<sup>1</sup>FAR § 52.215-10(g) states, "[n]otwithstanding [the general rule requiring rejection of late proposals], a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted."

estop the government from rejecting an offer where, as here,  
it is ultimately properly rejected. Martin Contracting,  
B-241229.2, Feb. 6, 1991, 91-1 CPD ¶ 121.

The protest is dismissed.



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